

DOCKET NUMBER WD70342
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE EX REL. CLAUDIA LEE & ASSOCIATES, INC., APPELLANT,

v.

**BOARD OF ZONING ADJUSTMENT OF KANSAS CITY, MO, ET AL.,
RESPONDENTS.**

DATE: October 27, 2009

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE JUSTINE ELISA DEL MURO, JUDGE

Appellate Judges:
Division One: Alok Ahuja, P.J., James M. Smart, Jr., and Lisa White Hardwick, JJ.

Attorneys:
Allen T. Zugelter, Kansas City, MO, **for appellant.**

M. Margaret Sheahan Moran, Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE EX REL. CLAUDIA LEE & ASSOCIATES, INC., APPELLANT

v.

BOARD OF ZONING ADJUSTMENT OF KANSAS CITY, MO, ET AL.,
RESPONDENTS

WD70342

JACKSON COUNTY

Before Division One Judges: Alok Ahuja, P.J., James M. Smart, Jr., and Lisa White Hardwick, JJ.

Claudia Lee & Associates (Lee), an outdoor advertising company, applied for a permit from the City to construct a billboard along I-70 in Kansas City. A City inspector concluded that the proposed billboard would violate the spacing requirements in the applicable zoning ordinance. The City's Board of Zoning Adjustment agreed and denied Lee's appeal. The circuit court affirmed the Board's decision, and Lee appealed.

After the Board hearing, but before the circuit court's decision, the City enacted a new ordinance. The parties agree that the new ordinance (if applicable) would preclude installation of Lee's proposed billboard. The City says the new ordinance renders this appeal moot. Lee says it is not moot because the appellate court may consider only the evidence in the record, and the new ordinance was not a part of that record.

DISMISSED.

Division One holds: In determining mootness, an appellate court may consider established facts that come to light outside the record-on-review. The new ordinance renders this case moot. Even if Lee were to re-apply for a permit, it could not be granted unless Lee had acquired a "vested right" to it under the old ordinance. Because it had not taken any steps toward "actual use" under the old ordinance, Lee could not establish that it had acquired a vested right under the prior ordinance. That the ordinance was not changed until after the Board's decision does not change this. The new ordinance applies, and it precludes granting a permit for the proposed billboard. Any ruling as to the propriety of the Board's decision would have no practical effect on any existing controversy. The appeal is dismissed as moot.

Opinion by: James M. Smart, Jr., Judge

October 27, 2009

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